THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.8010 OF 2005

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ORDER:

The 2nd respondent-Commissioner of Horticulture, Hyderabad, invited tenders by way of e-procurement vide tender notification dated 13.12.2004 for supply of Azadiractin (10,000 ppm), which is a neem based pesticide for a total quantity of 3,37,500 litres. The 1st petitioner-company submitted its bid before the closing date i.e., 22.12.2004. The 2nd respondent having evaluated the bids found that out of 9 (nine) bidders, 6 (six) bidders were qualified and the rest of them were disqualified for not satisfying the terms and conditions of the tender. The 2nd respondent has declared that the 4th respondent-Ozone Biotech Limited, Faridabad, Haryana, was the first lowest, followed by the 1st petitioner-company. The rate that was offered by the 4th respondent-company was Rs.576/- per litre, whereas, the 1st petitioner-company offered Rs.645/- per litre. Accordingly, the 2nd respondent placed an order with the 4th respondent. It is not in dispute that the entire quantity of 3,37,500 litres was to be supplied in three phases i.e., 1,12,000 litres by January, 2005; 1,12,000 litres by April, 2005 and 1,13,500 litres by October, 2005.

The 1st petitioner-company claims to be a local manufacturer of technical grade Azadiractin, possessing all the required facilities, capability and infrastructure. It is pleaded that since the 4th respondent could not assure supply as per the fixed time schedule, the 2nd respondent negotiated with the 1st petitioner-company and as a matter of fact the 2nd respondent extended the said offer even to the other participants. The 1st petitioner and two other bidders accepted the offer made by the 2nd respondent and gave their consent to supply the required quantity. It is stated that keeping in view the capacity of its plant and stocks, the 1st petitioner-company offered to supply 75,000 litres immediately, 20,000 litres in the month of April, 2005 and another 1,12,000 litres in the month of October, 2005. It is claimed that as instructed by the 2nd respondent, 1st the petitioner and others gave letters of

acceptance agreeing to supply the required quantity at the rate of Rs.645/- per litres. It is also claimed that they were fully equipped and ready to process the formulation and supply the product at the destinations and for the said purpose they invested about Rs.30.00 lakhs. However, when the 1st petitioner vide letter dated 3.01.2005 requested the 2nd respondent to release the purchase order, it was learnt that the 2nd respondent decided to release the purchase order in favour of the 4th respondent for a quantity of 60,000 litres. Immediately, the petitioners addressed letter dated 5.01.2005 requesting the 2nd respondent to release the purchase order in their favour. However, the 2nd respondent did not respond. The 1st petitioner-company has also expressed its willingness to make the supply at the rate of Rs.576/- per litre as is being supplied by the 4th respondent. It was also brought to the notice of the 2nd respondent that the capacity of the 4th respondent was only 1,20,000 litres per annum and the same would not meet the tender requirement of 3,37,500 litres to be supplied in one year. However, the 2nd respondent did not award the work in favour of the 1st petitioner and continued to issue supply orders only in favour of the 4th respondent. In the circumstances, the 1st petitioner made a detailed representation dated 10.1.2005 requesting the 2nd respondent to consider its offer to supply the remaining quantity. Since the 2nd respondent failed to consider the same, the petitioners filed W.P.No.1269 of 2005. The said Writ Petition was disposed of by this Court by order dated 7.02.2005 with a direction to the 2nd respondent to consider the representation of the petitioners and to pass appropriate orders within a period of two weeks. In pursuance thereof, the 2nd respondent by order dated 19.03.2005 informed the petitioners that the 4th respondent had already completed the supply of 60,000 litres for the 1st cycle and the treatment programme was in progress and the 4th respondent had given commitment to supply the balance requirement as per the schedule and at places indicated by the Government. An agreement had already been entered into with the 4th respondent, who was the lowest tenderer for supply of 3,37,500 litres of Azadiractin, and therefore, the request of the 1st petitioner could not be acceded. Accordingly, the request of the 1st petitioner was rejected. Aggrieved by the said action of the respondents, this Writ Petition is filed with a prayer to set aside the order dated 19.3.2005 and also seeking a consequential direction to the respondents to award the work of supply of Azadiractin in terms of

G.O.Ms.No.1020 dated 30.11.1976.

The contention of the petitioners is that as per G.O.Ms.No.1020 dated 30.11.1976 all the Government Departments/Corporations are required to give preference to the local manufacturers within the State than the manufacturers situated outside the State. It is contended that since the 4th respondent is not a local manufacturer and particularly since the petitioners have offered to make the supplies at the rate of Rs.576/- per litre, as was offered by the 4th respondent, the action of the 2nd respondent in rejecting the offer made by the petitioners is arbitrary and illegal, and contrary to G.O.Ms.No.1020 dated 30.11.1976.

On behalf of the respondents 1 to 3, the Commissioner of Horticulture, Andhra Pradesh, Hyderabad, filed a detailed counter-affidavit stating that the allegation of the petitioners that the 4th respondent had no capacity to meet the tender is not correct. It is explained that as per the documents supplied by the 4th respondent-company their annual production capacity is 4.5 lakhs litres and that the rate quoted by the 4th respondent-company was the lowest, having offered at the rate of Rs.576/- per litre, whereas, the 1st petitioner-company and other companies quoted much higher price. The plea of the petitioners that they were assured by the 2nd respondent to place orders with them has been denied and it is stated that as a matter of fact, the 1st petitioner-company and other companies expressed their inability to supply the material at the lowest bid price of Rs.576/- per litre. It is further stated that the 4th respondent-company had assured that they can deliver 60,000 litres up to 15th January, 2005, 1,12,500 litres from 1.04.2005 to 15.04.2005 and 1,75,000 litres from 1.10.2005 to 15.10.2005. It is also explained that three phases out of four phases of root feeding programme is completed and the last phase feeding will commence during December 2005 and January, 2006.

The 4th respondent-company filed a separate counter-affidavit denying categorically the allegation of the writ petitioners that the 4th respondent-company has no capacity to supply 3,37,500 litres of Azadiractin as required by the 2nd respondent. It is stated that their supply capacity was 4.5 lakhs litres and all the allegations made by the 1st petitioner-company that the 4th respondent-company had been unduly favoured and that the price offered by the 1st petitioner-company was accepted by the 2nd

respondent during the negotiations are incorrect and without any basis.

I have heard the learned counsel for both the parties and perused the material on record.

From the averments in the pleadings of both the parties and particularly having regard to the submissions made by the learned counsel across the bar, it is clear that three out of four phases of root feeding programme has already been completed. Though the 1st petitioner alleged that the 4th respondent-company has no capacity to supply the quantity as required by the 2nd respondent, the said allegation is without any basis, since admittedly, the 4th respondent-company has successfully handled the schedule and it has also completed the production as required by the 2nd respondent. It is also relevant to note that the 1st petitioner-company having participated in the tenders could not succeed and the 4th respondent-company herein was declared as the first lowest bidder.

Even with regard to the contention raised by the petitioners that the 2nd respondent failed to adhere to the priorities as prescribed under G.O.Ms.No.1020 dated 30.11.1976, it is to be noted that a perusal of the said order shows that it is nothing but certain guidelines issued by the Government so as to ensure that all the Government Departments, Undertakings, Corporations and Quasi-Government Bodies follow a uniform procedure to purchase their requirements. It is true that Clause (vi) of the said Government Order states that purchasing Departments/Organizations should enter into annual rate contracts with the local industries wherever possible. The language employed itself shows that it is not mandatory to place orders only with the local industries, but certain discretion is conferred on the Departments to take appropriate decision on the basis of the other circumstances. As long as such discretion is based on valid considerations and cannot be termed as perverse, this Court will not interfere in exercise of jurisdiction under Article 226 of the Constitution of India. At any rate, G.O.Ms.No.1020 dated 10.11.1976 is nothing but Governmental instructions stipulating certain guidelines, which do not have any statutory force. Hence even assuming that there is any deviation, the same will not entitle the 1st petitioner to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for enforcement of such mere non-statutory instructions.

Viewed from any angle, the 1st petitioner-company, which was admittedly declared as the second lowest, cannot claim any right much less legal right to award the work on par with the 4th respondent. Hence, no Mandamus can be issued compelling the respondents to place supply order with the 1st petitioner-company. The 2nd respondent having considered the representation of the petitioners passed the impugned order dated 19.03.2005, from which it is clear that an agreement had already been entered into with the 4th respondent-company, which is the lowest tenderer. The said order does not suffer from any infirmity, warranting interference by this Court.

Accordingly, the Writ Petition, which is devoid of any merit, is dismissed. No costs.

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(G. ROHINI, J.)

23rd November, 2005.

Kgr.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.8010 OF 2005

23rd November, 2005.

Between:

M/s Fortune Biotech Limited,

6-6-125, Annam Gardens,

Kavadiguda, Secunderabad,

represented by its Managing Director –

Annam Dilip Kumar & Another. .. Petitioners

And

The State of Andhra Pradesh,

Represented by the Agricultural

Production Commissioner and

Parliamentary Secretary,

Secretariat, Hyderabad and

three others. .. Respondents.